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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/639,530	05/01/96	ZHENG	Y PAT-1102

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EXAMINER

MAIL ART UNIT PAPER NUMBER

35004

3

DATE MAILED: 11/22/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION

1. Claims 1, 16 - 28 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1, 16 - 28 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Claims 1, 16-28 of this application have been copied by the applicant from United States Patent No. 5,411, 046 to Wan. These claims are not patentable to the applicant because of the following reasons:

1. Applicant's disclosure does not have support for the subject matter of claims 16, 23, 26; specifically, the elongate strip of foldable material in claims 16 and 26, the sides of each wall member joined to adjacent sides of adjacent side members inwardly of the periphery channel as recited in claim 23.

2. Copied claims 1, 17-22, 24, 25, 27, 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,301,705 (filed on Sept. 24, 1991 and issued on April 12, 1994). Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of claims is the same in both cases.

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA

1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

An interference cannot be initiated since a prerequisite for interference under 37 C.F.R. § 1.606 is that the claim be patentable to the applicant subject to a judgement in the interference.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Serial Number: 08/639530
Art Unit: 3504

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Ju, Nichols and Oberhaus are cited to show door on a panel; Brooks,
Von Mossel and Beder to show transparent/translucent cover; Norman '812
and '892 to show triangular tent
panels.

Any inquiry concerning this communication should be directed to
examiner L. Mai at telephone number (703) 308-2168.


LANNA MAI
PRIMARY EXAMINER
GROUP 3500

L. Mai

11-19-96